

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

RODNEY STEVEN MITUNIEWICZ,

Plaintiff,

v.

HAROLD CLARK *et. al.*,

Defendants,

Case No. C06-5383RBL

REPORT AND
RECOMMENDATION TO
DISMISS THIS ACTION
WITHOUT PREJUDICE

**NOTED FOR:
OCTOBER 26, 2007**

This Civil Rights/Americans With a Disabilities Action has been referred to the undersigned Magistrate Judge pursuant to Title 28 U.S.C. §§ 636(b)(1)(A) and 636(b)(1)(B) and Local Magistrates' Rules MJR 1, MJR 3, and MJR 4. This action was filed in July of 2006. (Dkt. # 1). The court issued an order to show cause why this action should not be dismissed without prejudice because Mr. Mituniewicz appears to now be a member of the class action covering the same issues in Paralez v. Washington Department of Corrections, 06-CV-5298JKA.

Class certification occurred August 10, 2007, in the Paralez case and the class has been defined as:

All disabled inmates of the Washington Department of Corrections who, since October 30, 2003, have been partially or wholly denied participation in the Department of Corrections' work release program because of a disability.

1 (Paralez v Washington Department of Corrections, 06-CV-5298JKA, Dkt. # 33 (order granting certification
2 and defining class)).

3 Mr. Mituniewicz did not respond to the court's order to show cause. Defendants believe Mr.
4 Mituniewicz is properly a member of the class and this action should be dismissed (Dkt # 55). The court now
5 recommends this action be **DISMISSED WITHOUT PREJUDICE** as Mr. Mituniewicz is part of the class
6 action in Paralez v. Washington Department of Corrections, 06-CV-5298JKA.

7 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal rules of Civil Procedure, the
8 parties shall have ten (10) days from service of this Report to file written objections. *See also* Fed. R. Civ.
9 P. 6. Failure to file objections will result in a waiver of those objections for purposes of appeal. Thomas v.
10 Arn, 474 U.S. 140 (1985). Accommodating the time limit imposed by Rule 72(b), the clerk is directed to
11 set the matter for consideration on **October 26, 2007**, as noted in the caption.

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14 Dated this 25 day of September, 2007.

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16 /S/ J. Kelley Arnold
17 J. Kelley Arnold
18 United States Magistrate Judge
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